Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Text-Enabled Toll-Free Numbers	)	WC Docket No. 18-28
	)	
Toll Free Service Area Codes	)	CC Docket No. 95-155
	)	

COMMENTS OF CTIA

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To: The Commission

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CTIA[1] submits these comments in response to the Federal Communications Commission's (Commission's) *Declaratory Ruling and Notice of Proposed Rulemaking* in the above-captioned dockets.[2]

I. Introduction and Summary

Today, consumers rely on messaging as a trusted communications medium, to a greater degree than other means of communication, as the marketplace and records in multiple Commission proceedings demonstrate. CTIA supports efforts to ensure the messaging ecosystem

[1] CTIA® (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st-century connected life. The association's members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984.

[2] *Text-Enabled Toll Free Numbers et al.*, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 18-77, WC Docket No. 18-28, CC Docket No. 95-155 (rel. June 12, 2018) ((*Declaratory Ruling* and/or *NPRM*, as appropriate); *see also Wireline Competition Bureau Announces Comment and Reply Comment Dates for Notice of Proposed Rulemaking on Text-Enabled Toll Free Numbers*, Public Notice, DA 18-765, WC Docket No. 18-28 *et al.* (WCB rel. July 24, 2018) (announcing deadlines for filings in response to the *NPRM*).

remains a trusted medium for consumers that is free of unwanted messages (e.g., spam) and unscrupulous actors attempting to defraud consumers.

By aligning with existing industry best practices, including CTIA's *Messaging Principles and Best Practices*, the *Declaratory Ruling* correctly recognizes that subscribers of toll-free telephone numbers have the exclusive right to text-enable their toll-free telephone numbers. However, the Commission need not take any of the regulatory actions proposed in the *NPRM* because the *Declaratory Ruling* and industry self-regulatory efforts are sufficient to protect subscribers of toll-free numbers and consumers, and the proposals in the *NPRM* are inconsistent with the Commission's de-regulatory approach to interstate information services.

II. Consumers Continue to Rely on Messaging as a Trusted Communications Medium

Consumers view text messaging as a trusted and convenient communications medium[3] as the record showed when the Commission last sought comment on the text-enablement of toll-free numbers.[4] Now, just over a year and a half later, the text messaging ecosystem remains every bit as much a trusted and least-polluted medium for consumers' communications – because text messaging providers, including wireless providers, actively manage their platforms to

[3] *See, e.g.*, Comments of CTIA, WC Docket No. 95-155, WT Docket No. 08-7, at 3-6 (filed Dec. 5, 2016) (CTIA Comments); Letter from the National Organization of Black County Officials to the Honorable Tom Wheeler, Chairman, FCC, WT Docket No. 08-7, at 1 (filed Dec. 17, 2015) ("Text messaging provides the consumer with a level of convenience and trust that typical voice calling does not. Wireless carriers ensure that consumers enjoy the convenience and relative trust of texting by filtering messages for unwanted spam, malicious messaging, and other fraudulent activity."); Comments of the American Consumer Institute, WT Docket No. 08-7, at 3 (filed Nov. 17, 2015) ("While 20-25% of emails are opened within 24 hours, 90% of SMS messages are opened within 15 minutes. This is because consumers can rely on these services to be generally free and safe and trusted communications." (internal citations, quotations omitted)).

[4] *Wireline Competition Bureau Seeks Comment on Somos, Inc. Petition for Declaratory Ruling Regarding Registration of text-Enabled Toll Free Numbers*, Public Notice, 31 FCC Rcd 12010 (WCB 2016).

protect consumers from unwanted messages. Particularly as compared to other platforms such as email, consumers consistently rank messaging highly in surveys of trust and reliability.[5] Further, the Commission is well-aware of the rise of illegal and unwanted robocalls in voice telephony (and the significant efforts that wireless providers are undertaking to address these issues).[6] In light of the foregoing, it is hardly surprising text messaging remains a trusted medium, because consumers aren't subjected to same level of unwanted communications as on other platforms.

Businesses' reliance on text messaging to communicate with their customers also continues to grow. The record in late 2016 reflected that businesses, recognizing the value of messaging, were already increasingly embracing messaging as a new way to communicate with

[5] CTIA Comments at 3-4; *see also id.* at n.11 (noting in part that "59% of registered voters text friends and family multiple times a day, using messaging to stay in touch more than any other medium" and that "adults generally respond to most text messages in less than 30 minutes – the fastest of any method 'tested by far'" (citing Memorandum from Morning Consult to CTIA (Nov. 18, 2016) (on file with the author))); Opposition of CTIA – The Wireless Association®, WT Docket No. 08-7, at 8-12 (filed Nov. 20, 2015) (CTIA Opposition) (in a subsection entitled "Messaging Is Increasingly the Most Popular and Trusted Way to Communicate," noting in part that "Americans view messaging as a highly accessible – and trusted – medium, and this trust is largely due to the fact that the majority of text messages are clean of any harmful content" (internal citations, quotations omitted)).

[6] *See, e.g.*, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Notice of Proposed Rulemaking and Notice of Inquiry, 32 FCC Rcd 2306, 2331 (2017) (Statement of Chairman Pai) ("There are millions of Americans as fed up by illegal robocalls … I count myself as one of them. Robocalls are … frequently employed to scam our most vulnerable populations, like elderly Americans, out of their hard-earned dollars."); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9755 (2017) (Statement of Chairman Pai) ("As Chairman, I've repeatedly made clear that the FCC's top consumer protection priority is aggressively pursuing the scourge of illegal robocalls."); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Further Notice of Proposed Rulemkaing, FCC 18-31, CG Docket No. 17-59, at 34 (rel. Mar. 23, 2018) (Statement of Commissioner Carr) ("[W]e have elevated robocalls to our top enforcement priority[.]"); *id.* at 35 (Statement of Commissioner Rosenworcel) ("The sheer volume of robocalls we receive is insane. Year-in and year-out they represent the largest single category of complaints at the [FCC]. … When it comes to robocalls, we can and should be doing so much more.").

consumers, including by text-enabling businesses' toll-free numbers.[7] This trend has continued; more and more businesses are choosing to interact with their customers via the trustworthy channel of texting.[8] As a recent *Washington Post* article describes, messaging is "the new frontier" of interaction between businesses and customers.[9] And as the article rightly notes, this interaction includes other messaging platforms, such as Facebook Messenger and Apple's iMessage, in addition to SMS/MMS. Indeed, these other platforms continue to outstrip wireless providers' SMS/MMS platforms in terms of messages handled.[10]

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[7] *See, e.g.*, CTIA Comments at 6-8; Letter from Steven A. Augustino, Counsel to Zipwhip, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 95-155, WT Docket No. 08-7, at 7 (filed Feb. 23, 2017) ("The texting on toll-free market … is growing as a result of a healthy market of multiple service providers and major brands adopting texting as a consumer communication channel."); Zipwhip, Inc. Opposition to Petition for Declaratory Ruling, WC Docket No. 95-155, WT Docket No. 08-7, at 8 (file Dec. 5, 2016) ("The market for business texting … is thriving … [t]he market for business messaging is expected to grow to a $60 billion industry by 2018. … This level of acceptance is truly amazing when you consider that commercial texting on toll-free phone numbers is barely three years old[.]").

[8] *See, e.g.*, Jack Loechner, *Automated SMS Messages Projected > 2.7 Trillion By 2022*, MEDIAPOST (Dec. 8, 2017) https://www.mediapost.com/publications/article/311016/automated-sms-messages-projected-27-trillion-by.html ("According to a new report from Juniper Research the volume of A2P (Application to Person) messaging is expected to increase by 20% over the next 5 years to more than 2.7 trillion by 2022, up from 2.1 trillion this year."); Regina Pazvakavambwa, *Automated SMS Messages to Reach 2.7 Trillion by 2022*, IT WEB (Nov. 22, 2017), https://www.itweb.co.za/content/ALPwQ5Ml2bRvNgkj (discussing the same paywalled report and noting the "growth will be driven by an increase in automated marketing, payments and authentication messages" and that "[o]ne of the prime factors that are driving the demands for A2P SMS adoptions is the increasing number of mobile phone subscribers globally, making them ubiquitous devices for communication purposes").

[9] Geoffrey A. Fowler, *Want Better Customer Service? Don't Call. Text.*, WASH. POST (Aug. 9, 2018), https://www.washingtonpost.com/technology/2018/08/09/want-better-customer-service-dont-call-text/?utm_term=.dc800919936f.

[10] *See, e.g.*, Synchronoss, *The Impact of OTT* (2016), http://synchronoss.com/wp-content/uploads/The-Impact-of-OTT-Whitepaper.pdf ("By 2013 [over-the-top, or "OTT"] messaging had surpassed SMS as the primary source of message generation, and today SMS represents less than 10% of traffic globally."); Benedict Evans, *WhatsApp Sails Past SMS, but Where Does messaging Go Next?*, BENEDICT EVANS (Jan. 11, 2015), http://ben-

III. The Commission's *Declaratory Ruling* Protects a Subscriber's Interest in Text-Enabling a Toll-Free Telephone Number, and Further Regulations are Unnecessary or Contrary to the Commission's Policies

The Commission's *Declaratory Ruling* reflects the correct policy: Toll-free voice subscribers should control whether and how their toll-free numbers are text-enabled. In this regard, the *Declaratory Ruling* is consistent with CTIA's *Messaging Principles and Best Practices* (*Messaging Principles*),[11] which state that the authority to text-enable rests solely with the toll-free voice subscriber.[12] As the Commission correctly observes, this clarification will further help protect (1) the rights of toll-free subscribers and their investments in the use of the toll-free telephone number, (2) consumers and businesses that use toll-free telephone numbers from confusion and fraud, and (3) the value of toll-free numbers as a public resource.[13]

The question for the Commission that the *NPRM* raises is – as Chairman Pai puts it – "what else, *if anything*, the FCC should do to promote a competitive and innovative marketplace in text messaging services."[14] To protect subscribers of toll-free numbers from unauthorized text-enablement and consumers from unwanted messages and fraud, the Commission should encourage ecosystem stakeholders to adhere to CTIA's *Messaging Principles*, rather than impose unnecessary regulations. As discussed below, the Commission need not take further action at this

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evans.com/benedictevans/2015/1/11/whatsapp-sails-past-smsbut-where-does-messaging-go-next (reporting that by as early as 2015, the total messaging volume of a single OTT service, WhatsApp, was 50 percent larger than the messaging volume of the entire SMS market).

[11] CTIA, *Messaging Principles and Best Practices* (Jan. 19, 2017), https://api.ctia.org/docs/defaultsource/default-document-library/170119-ctia-messaging-principles-and-best-practices.pdf (*Messaging Principles*, hereinafter cited to by specific section).

[12] *Id.* § 5.4.1.

[13] *Declaratory Ruling and NPRM* at 5 ¶ 11.

[14] *Id.* at 22 (emphasis added).

time to achieve this goal. Industry best practices already address these issues and the record is devoid of evidence of a material problem. Moreover, the specific regulations proposed in the *NPRM* would be contrary to the Commission's policies in a number of respects.

A. Industry Best Practices and Self-Regulation Ensure the Messaging Ecosystem Operates Consistent with the Declaratory Ruling

The *Declaratory Ruling's* principle that toll-free subscribers control the right to text-enable a toll-free number is actively protected by current industry practice. CTIA's *Messaging Principles* encourage ecosystem participants to take steps to ensure the validity of customer authorizations to text-enable toll-free telephone numbers. Hence, for example, Section 5.4.1 states that "only TFNs [toll-free numbers] that are currently reserved or in working status for the benefit of a TFN voice subscriber should be enabled for messaging."[15]

Further, the *Messaging Principles* recognize that Responsible Organizations (RespOrgs) have a particular role in the Commission's numbering rules to reserve toll-free numbers for subscribers of toll-free voice services, and should be aware that a toll-free number has been text-enabled by the subscriber. For that reason, the *Messaging Principles* state that RespOrgs should have transparency about toll-free numbers that are text-enabled and provides that "any process for provisioning messaging associated with a [toll-free number] should allow or provide synchronization with a registry or registries that provide a comprehensive record of text-enabled [toll-free numbers] and associated [toll-free number] subscribers."[16] Of those registries, the *Messaging Principles* urges that they be operated consistent with the principles of "fair dealing,

[15] *Messaging Principles* § 5.4.1.

[16] *Id.* § 5.4.2.

on reasonable and non-discriminatory rates, terms and conditions with stakeholders of the messaging ecosystem and operating the registry in good faith."[17]

The record suggests that the marketplace is meeting these expectations without the adoption of any of the regulatory proposals in the *NPRM*. Zipwhip, for example, recently stated "it already follows the principle that the subscriber – and only the subscriber – can authorize the text-enablement of a number."[18] Significantly, the record does not suggest that there is a history of unauthorized text-enablement of toll-free telephone numbers that would justify further regulatory action at this time. The *NPRM* cites to a few parties' speculations about the possibility of unauthorized text-enablement of toll-free numbers[19] – but there have been no signs of anything approaching a systematic problem. Thus, as Commissioner O'Rielly noted in his statement in this proceeding, "it is not clear, based on the present record, that there is a problem that requires regulatory intervention."[20]

In the voice marketplace, by contrast, there are documented instances of RespOrgs and toll-free subscribers violating the Commission's toll-free rules.[21] Yet the Commission has

[17] *Id.* § 5.5

[18] Letter from Steven A. Augustino, Counsel for Zipwhip, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-28, at 2 (filed May 29, 2018).

[19] *See, e.g., Declaratory Ruling and NPRM* at 3-4 ¶ 7 nn.21-22.

[20] *Id.* at 23 (Statement of Commissioner O'Rielly).

[21] *See, e.g., Telseven, LLC, Calling 10, LLC, Patrick Hines aka Brian Hines,* Forfeiture Order, 31 FCC Rcd 1639 (2016) (RespOrg entities amassed over a million toll-free numbers that were used to cram unwanted charges on the bills of callers who reached those numbers through misdialing); *Richard Jackowitz; IT Connect, Inc.*, Forfeiture Order, 30 FCC Rcd 2405 (2015) (toll-free subscriber worked with RespOrgs to secure large amounts of toll-free numbers without having any actual subscribers for those numbers, which they brokered to legitimate businesses for a profit in violation of FCC rules).

proposed to minimize prescriptive regulation over the assignment of toll-free telephone numbers by relying instead on marketplace incentives as supplemented by enforcement actions when necessary.[22] Here, the NPRM suggests a prescriptive regime to record subscribers' authorization to text-enable a toll-free number without a similar record of support. To the extent that any isolated instances of unauthorized text-enablement of toll-free numbers emerge, the Commission can appropriately enforce the *Declaratory Ruling* by addressing those issues through the existing complaint process or other appropriate action, as it does when RespOrgs and others run afoul of the rules. There is, however, no record to support the need for the regulations proposed in the NPRM at this time.

B. The Regulatory Proposals in the NPRM Are Burdensome and Contrary to the Commission's Regulatory Approach to an Interstate Information Service

In the face of an industry approach that is achieving the Commission's goals and the lack of any problems in need of a regulatory solution, the NPRM proposes a burdensome regulatory regime that would undermine the Commission goals and policies with respect to interstate information services. Thus, the Commission should conclude that no further action is necessary at this time.

First, the proposals in the *NPRM* would be contrary to the Commission's stated goal of a process that is "as simple and efficient as possible" to support the conclusions in the *Declaratory*

[22] *Toll Free Assignment Modernization*, Notice of Proposed Rulemaking, 32 FCC Rcd 7885, 7888 ¶ 5, 7895 ¶ 30 (2017) (proposing a market-based auction approach, as well as – "[c]onsistent with the [proposed] market-based approach for assigning mutually exclusive toll free numbers" – the "development of a secondary market for toll free numbers generally"). *See also Recommended Rule and Policy Changes: Toll Free Number Assignment Modernization,* Report to the FCC of the NANC Toll Free Assignment Modernization (TFAM) Work Group (June 4, 2018) (recommending only limited changes to the rules).

Ruling.[23] Indeed, it is difficult to imagine how a mandatory system that could require any kind of coordination among the toll-free subscriber, the RespOrg, and a third party that the subscriber has selected to text-enable the number could possibly be implemented in a simple or efficient manner. For example, imposing an obligation on subscribers to notify their RespOrgs before they text-enable a new number[24] would create an unnecessary deterrent, running counter to the Commission's goal of facilitating toll-free subscribers' ability to benefit fully form their toll-free numbers – including by text-enabling them.[25] Further, the proposals to substantially increase the amount of information included in the SMS/800 Database similarly works contrary to the goal of a "simple and efficient" approach.[26] The Commission does not require this level of detail in the numbering databases for voice services, and requiring it here would add considerable complexity. Moreover, including subscribers' personal information in the SMS/800 Database makes it a more attractive target for bad actors and increases subscribers' vulnerability. Because any process along the lines proposed in the *NPRM* is likely to be anything but "simple" or "efficient," the *NPRM*'s approach would be more likely to inhibit, rather than promote, the expanding use of toll-free telephone numbers for messaging purposes.

Additionally, mandating the use of a particular registry at this time would undercut ongoing industry efforts to facilitate interoperability and protect consumers from receiving unwanted messages. In order to further expand the utility of messaging to consumers and businesses, including by mitigating the risk of unwanted messages, the messaging ecosystem

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[23] *Declaratory Ruling and NPRM* at 6 ¶ 15.

[24] *Id.* at 6 ¶ 14.

[25] *See id.* at 5 ¶ 11.

[26] *Id.* at 7 ¶ 17.

continues to introduce new registries and databases that facilitate interoperability and validate message senders. Commission designation of a specific registry for toll-free text enablement would have a significant impact on these evolving efforts. Because these efforts are being led by participants in the messaging ecosystem, they are likely to be more precisely tailored to protect consumers while facilitating an efficient marketplace. These efforts are also more likely to adapt to changes in circumstances than a requirement codified in the Commission's toll-free numbering rules, which have not substantially changed in decades.

Mandating the use of the incumbent SMS/800 database in connection with the highly competitive messaging space would be particularly problematic given its historical alignment with the highly regulated voice telephony market. For this reason, the Commission should be wary of adopting regulations that effectively grant a regulatory monopoly to any registry or database in the absence of a clear reason to do so. Commission action at this nascent stage of the expanding messaging services marketplace risks limiting innovative, efficient solutions – particularly in the absence of any apparent need to do so.

Finally, the *NPRM*'s regulatory approach is not consistent with the Commission's policy of promoting a competitive, innovative marketplace for interstate information services. As the Commission itself recently remarked: "Utility-style regulation is particularly inapt for a dynamic industry built on technological development and disruption."[27] CTIA has established in previous filings that text messaging is an interstate information service,[28] operating in a dynamic

[27] *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311, 369 ¶ 100 (2018).

[28] CTIA Opposition at 32-48 (describing why, as a matter of law, SMS, MMS, and short codes are not Title II communications services, and how SMS and MMS are information services); *see also* CTIA® Reply Comments in Opposition, WT Docket No. 08-7, at 19-25 (filed Dec. 21, 2015) (explaining that the Communications Act of 1934, as modified, dictates messaging is not a

marketplace characterized by innovation. It is therefore unsuited to the prescriptive *ex ante* regulation proposed in the *NPRM*.

Further, the lack of clarity regarding whether the *NPRM* proposes to impose new regulations on all messaging platforms that enable toll-free numbers, including edge providers' messaging platforms, or specifically on wireless providers' SMS platforms similarly cautions against further Commission action.[29] As previously noted, OTT and other messaging providers compete with wireless providers' SMS/MMS messaging platforms – and handle multiples of the volume of traffic that SMS/MMS handles.[30] As a result, adoption of regulations that fall only on SMS/MMS would subject wireless providers' messaging services to regulatory obligations that are not imposed on their OTT competitors who enjoy a larger market share. As Commissioner O'Rielly noted, "It makes no sense to begin placing antiquated regulatory burdens on a legacy service when consumers are already shifting to new forms of messaging that we have no authority to regulate."[31]

IV. Conclusion

The industry's successful effort to protect consumers from unwanted traffic in the messaging space is strong evidence that the industry is working towards the same goals that the Commission seeks to protect. The Commission should maintain a light-touch regulatory

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Title II "telecommunications service" and is an integrated information service – and that there are no credible arguments to the contrary).

[29] Footnote 8 in the item limits application of the term "messaging provider" to wireless providers' SMS platforms, but only in the *Declaratory Ruling*. Its use in the NPRM appears undefined. *Declaratory Ruling* at n.8.

[30] *See, e.g., supra* note 10.

[31] *Declaratory Ruling and NPRM,* Statement of Comr. Michael O'Rielly.

framework for messaging services, avoiding intervention in the absence of evidence of market failure and weighing costs and benefits to innovation and competition before adopting requirements beyond the *Declaratory Ruling*. For these reasons, the Commission should affirmatively conclude that additional regulatory intervention with regard to the text-enablement of toll-free numbers is not warranted, recognize the importance of industry efforts to facilitate interoperability and protect consumers, and police any isolated instances of actions inconsistent with the *Declaratory Ruling*.

Respectfully submitted,

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